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Importance of Financial Guarantees for Ensuring Reclamation of Federal Lands

Statement of
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Before the
Subcommittee on Mining and
Natural Resources
Committee on Interior and Insular Affairs
House of Representatives

GA1.5/2:

Dear Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our views on the issues and problems related to bonding of mining operations as well as the adequacy of Bureau of Land Management (BLM) and Forest Service requirements for ensuring that hardrock mining operations are reclaimed. My remarks today are based largely on reports that GAO has issued regarding reclamation and bonding of hardrock mining operations, and Interior's oversight of permitting and bonding of coal mine operations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In today's testimony I will discuss primarily our work related to hardrock mining on federal lands. However, I will also comment briefly on the work we have done regarding the reclamation of coal operations.

EXTENT OF RECLAMATION PROBLEMS

Mining operations, by their very nature, disturb the land and, if left unreclaimed create environmental and public safety hazards. In 1988 we estimated that, as a result of hardrock mining operations in 11 western states, over 280,000 acres relating to abandoned, suspended, or unauthorized operations on federal lands needed reclamation at an estimated cost of $284 million.[1] Almost $50 million will be required to reclaim about 50,000 acres of these lands that were disturbed after BLM and the Forest Service had implemented reclamation regulations.

The cost of reclaiming abandoned coal mining sites is even higher. SMCRA created an Abandoned Mine Reclamation Fund, which is supported by fees assessed on coal mine operations. When fee collections statutorily end in 1992, coal mine operators will have deposited an estimated $3 billion into the fund. However, this

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[1] Federal Land Management: An Assessment of Hardrock Mining Damage (GAO/RCED-88-123BR, Apr. 19, 1988).

funding level will fall short of the estimated $5.8 billion needed to correct high-priority problems affecting public health and safety. In 1986 the Congressional Research Service reported that $33 billion may be needed to correct all problems caused by mined lands left unreclaimed prior to the act.

FOREST SERVICE AND BLM MUST PROTECT FEDERAL LAND FROM HARDROCK MINING DAMAGE

The Forest Service and BLM are responsible for minimizing hardrock mining damage to federal land during mining operations and ensuring that mine operators reclaim the land when mining is completed. Of approximately 727 million acres of federal land, the Forest Service and BLM manage about 191 million and 334 million acres, respectively. Their success has been mixed.

FOREST SERVICE

The Forest Service requires mine operators to file a plan of operation for any operation that it determines could result in "significant surface disturbance." The plan describes the entire mining operation, including reclamation. It helps the Forest Service work with miners, from the beginning of their operations, to devise strategies that will minimize the damage from mining, and it helps to ensure that adequate measures are provided for reclamation.

The Forest Service requires financial guarantees to cover reclamation costs where significant surface disturbance is likely to occur. In August 1987 we reported that, on the basis of our review of 336 mining plans filed or in effect with the Forest Service in four states during calendar year 1986, the Service's requirement for financial guarantees to ensure reclamation was

working effectively.[2] The Forest Service required financial guarantees for 214 of the 336 operations. At the time of our review, 56 sites requiring reclamation had been or were in the process of being reclaimed. The Forest Service did not require financial guarantees for the remaining 122 operations because it considered these unlikely to cause significant disturbance. However, when mining activity was completed, 10 of these operations without financial guarantees required reclamation. In six cases, the operators reclaimed the sites even though they had not been required to post a financial guarantee. However, in the other four cases, the Forest Service experienced problems getting the miners to reclaim their operations.

The Forest Service attempts to make it easier for operators to obtain financial guarantees by providing for various types of financial guarantees other than surety bonds. These include the posting of cash, irrevocable letters of credit, certificates of deposit, and savings accounts. According to Forest Service officials, this allows mine operators to choose the type of guarantee most compatible with their financial situation while protecting the government's interests. Our review of 223 financial guarantees held by the Forest Service in 1986 showed that less than one-third of them were classified as surety bonds.

In addition to the various types of financial guarantees, the Forest Service works with operators during its review of their plans to identify mining strategies, such as phased mining, that may be used to minimize the amount of land damaged at any one time. By establishing such a phased approach, the amount of the financial guarantee can be limited to the land disturbed in each phase. The Forest Service also requires periodic inspections to ensure that

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[2]Federal Land Management: Financial Guarantees Encourage Reclamation of National Forest System Lands (GAO/RCED-87-157, Aug. 24, 1987).

operations comply with plans, and it requires enforcement actions to obtain compliance when they do not.

BLM

BLM's land protection program is much less demanding. It divides mining operations into three classes with separate requirements: (1) Casual use operators--those not using mechanized equipment or explosives--need not notify BLM of their activities. (2) Operators disturbing 5 or fewer acres per year must file only a "notice of intent" with BLM that describes mining plans but does not require BLM's approval. (3) Operators expecting to disturb more than 5 acres are required to file a plan of operation. In 1988, 2,034 notices of intent to mine and 469 plans of operation were filed. In the process of reviewing and approving a plan of operation, BLM has an opportunity to work with operators to devise approaches that will minimize undue land degradation. However, because operations of 5 or fewer acres do not require approval, BLM is limited in its ability to work with operators to minimize land disturbance. This limit is particularly important because BLM requires few operators to post financial guarantees.

BLM's current regulations do not permit it to require bonds or other financial guarantees for operations on 5 or fewer acres unless the operator has been cited for noncompliance in the past. Although BLM can require bonds for operations that will disturb more than 5 acres, it rarely does. For example, in 1986 we reported that of 556 mining operations with notices of intent or plans of operations on file in 1981, BLM required only one to post bond.[3] BLM visited 246 of these sites and found that 96, or 39 percent, were unreclaimed at the time of the visit. BLM did not know, however, whether these sites had been abandoned or operations

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[3]Public Lands: Interior Should Ensure Against Abuses From Hardrock Mining (GAO/RCED-86-48, Mar. 27, 1986).

simply suspended, because operators had not informed BLM of their intent. If these sites are to be reclaimed, it is likely that the funds to reclaim many of them will have to come from the federal treasury.

BLM believes that a federal program of mandatory bonds or other financial guarantees for operators will be expensive to administer and harmful to small operators. However, because of the costs involved in reclaiming abandoned, unreclaimed mining sites, and the Forest Service's success in using financial guarantees, we recommended that BLM adopt a bonding policy, similar to the Forest Service policy, which requires operators to post financial guarantees if their operations are likely to cause significant land disturbance.

BLM recommends compliance visits to ensure that operators comply with their plans and other land-use requirements and requires enforcement actions to correct cases of noncompliance. Because of BLM's limited bonding policy, compliance and enforcement actions are very important to ensure that operators do not needlessly damage the land. BLM recommends that its district offices make at least one inspection to ensure that operators are complying with reclamation and operating requirements. However, we reported that by 1985, BLM had not inspected 310 of the 556 operations initiated in 1981.[4] Since that time, BLM has increased the emphasis on its compliance program to ensure that operations are inspected. We have not recently reviewed BLM's inspection and enforcement program.

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[4]GAO/RCED-86-48, Mar. 27, 1986.

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT

SMCRA created Interior's Office of Surface Mining Reclamation and Enforcement (OSMRE) whose duties include overseeing state regulatory programs intended to ensure that the environment is protected from the effects of coal mining. A key requirement of SMCRA is that applicants submit performance bonds in an amount that will ensure the availability of funds to meet reclamation requirements. The Secretary of the Interior is also authorized to approve alternative systems to achieve the purposes of the bonding requirement.

Over the years we have reported on problems with surface coal mining reclamation and the adequacy of bonds. We have also discussed issues related to the difficulty of obtaining performance bonding. As early as 1981 we suggested to the Secretary of the Interior that OSMRE emphasize alternatives to bonding when revising its surface mining regulations.[5] More recently we recommended that procedures be developed to determine the adequacy of performance bonds and that criteria be developed for evaluating the adequacy of alternative bonding systems.[6] In June 1987 OSMRE told us that it had developed procedures for determining bond adequacy.

While the corrective action taken should help ensure that adequate funds are available for reclamation, those funds will only be available if operators can obtain bonds or other financial

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[5]Letter to the Secretary of the Interior (CED-81-145, Aug. 5, 1981).

[6]Surface Mining: Interior Department Oversight of State Permitting and Bonding Requirements (GAO/RCED-86-38, Dec. 23, 1985). Surface Mining: Difficulties in Reclaiming Mined Lands in Pennsylvania and West Virginia (GAO/RCED-86-221, Sept. 22, 1986).

guarantees. Last year we reported that surety bonds have become more difficult to obtain, particularly for small operators.[7]

CONCLUSION

In conclusion, the Forest Service's approach--working with miners to limit surface disturbance to public lands and then requiring some form of financial guarantee to help ensure reclamation--has been effective. In fact, the limited reclamation problems that we reported the Forest Service was having were related to operations for which no financial guarantee had been required. BLM, however, only exercises approval authority for about 20 percent of the mining operations on its lands--those in excess of 5 acres. While this makes the posting of a financial guarantee all the more important, BLM has chosen to implement a very limited program of financial guarantees. Although we recognize BLM's concern for imposing an additional burden on mine operators, without a financial guarantee, BLM cannot ensure that reclamation will occur. As suggested by the Forest Service's experience, the requirement for a financial guarantee still permits miners to operate and at the same time protects the public from the possibility of mine abandonment without reclamation.

We recognize that some operators may have difficulty obtaining surety bonds, which is one form of financial guarantee. Other means are available, however, to responsible operators for providing the necessary financial guarantees that public lands will be reclaimed. These means include phased mining, which limits the amount of financial guarantee required for ensuring reclamation, and the use of financial guarantees other than surety bonds. In addition, we believe that the answer to the tight reclamation bond market will not come form one single source, but

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[7]Surface Mining: Cost and Availability of Reclamation Bonds (GAO/PEMD-88-17, Apr. 8, 1988).

must involve cooperation among the entire mining community, including mine operators, the surety industry, the Department of the Interior, and the state regulatory authorities.

Our work has also led us to conclude that the cost of posting a financial guarantee so that public lands will be reclaimed must be considered part of the cost of a mining operation. This cost is justified by the need to ensure that mined lands are reclaimed by the operator and not at public expense.

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Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or members of the Subcommittee may have.